

Charity Registration 1048170

Charity Fund Classification Policy

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1 Introduction & Background

- 1.1 The N&N Hospitals Charity is a registered charity (number 1048170), hereafter referred to as 'the Charity'. The Charity is overseen and administered by the NNUH Foundation Trust Board of Directors acting in the capacity of Corporate Trustee.
- 1.2 The Corporate Trustee has a duty to ensure that funds donated to the Charity are spent effectively and efficiently in accordance with the Objects of the Charity, charity law and the wishes of donors where applicable.
- 1.3 The proper administration and use of individual charitable funds is essential if charity trustees are to avoid acting in breach of trust. In broad terms there are two primary classes of fund: those that are **unrestricted** in their use, which can be spent for any charitable purposes of a charity; and those that are **restricted** in use, which can only be lawfully used for a specific charitable purpose. The terms 'restricted' and 'unrestricted' are defined in the Charities SORP and summary information is provided at Appendix A to this Policy.
- 1.4 Each class of fund has unique characteristics in trust law. In accordance with Charity Commission guidance, assets donated to the N&N Hospitals Charity are held in three types of Fund:
- i) Restricted; or
 - ii) a) Unrestricted (general); or
b) Unrestricted (designated).
- 1.5 During 2017 & 2018, in conjunction with KPMG (the Charity's External Auditor), the Charity undertook a review of the classification of its existing funds and the evidence that funds should be 'restricted'. In the absence of such evidence, funds were reclassified as unrestricted (typically 'unrestricted (designated)') as recommended by the Charity Commission.
- 1.6 Following this review and updating process, the Charity now has a small number of restricted and unrestricted (general) funds, and a significant number of funds classified as unrestricted (designated). The designated funds are typically linked to wards, departments, clinical specialisms and, in some cases, to particular projects.
- 1.7 This Policy sets out the Charity's approach and processes for ensuring that donated funds are appropriately classified hereafter.

2 Do donors' wishes create 'trusts' (restricted funds)?

- 2.1 Underhill's Law of Trusts and Trustees (15th edn) explains the position as follows:
- "If a gift in terms absolute is accompanied by a desire, wish, recommendation, hope, or expression of confidence that the donee will use it in a certain way, no trust to that effect will attach to it, unless on the will as a whole, the court comes to the conclusion that a trust was intended."*
- 2.2 In simple terms this explanation confirms that a trust (or restricted fund) will arise where there is an unequivocal restriction imposed by a donor but it does **not** arise from a 'desire, wish, recommendation, hope or expression of confidence' that the trustees will use a donation in a certain way.
- 2.3 The Charity Commission guidance is that donations should be presumed to be unrestricted unless they are subject to clear evidence requiring restriction.
- 2.4 In the context of the NHS, it is commonly the case that a donation will be received with the donor expressing a 'desire, wish, recommendation, hope or expression of confidence' as to use. In other cases the context of the gift, for example donation to a particular fund adviser

or within a particular setting, gives a clue as to a donor's probable wishes. These expressed wishes or contextual clues provide an indication or expectation (but not a legal restriction) as to how the donation should be used, if possible and practicable. They may however indicate that it would be appropriate for the donation to be 'designated' within the unrestricted funds.

3 Process for accepting restricted donations and for creating restricted funds

- 3.1 For a particular donation to be properly treated as restricted requires positive evidence of restriction. In most cases trustees should make this classification only where there is written evidence of an intention to restrict, for example a will, a letter from a donor, terms of a grant, or explicit fundraising appeal literature.
- 3.2 To obtain assurance that the requisite review of the relevant evidence base has been undertaken, prior approval of the Charity Corporate Trustee or Charitable Funds Committee is required before either:
- a new restricted fund is created; or
 - donations are added in whole or part to an existing restricted fund.
- 3.3 It is possible to anticipate that certain restrictions or conditions of donation may be unacceptable to the Charity – for example a requirement that funds may only be used in a specific locality or for a purpose that does not accord with the Charity Objects or the strategy of the Charity or Foundation Trust. Donations that are offered to the Charity with restrictions may therefore only be accepted on behalf of the Charity once approval has been received from either the Charitable Funds Committee or Corporate Trustee, with delegated authority to the Executive Lead for Charitable Funds where such restrictions are obviously not contentious (e.g. donation to or consistent with a fundraising appeal).

4 Ensuring correct classification of donations at point of receipt

- 4.1 Donations are received in many different ways, with donors expressing the terms of their donations using a variety of different formulae. Trustees have a responsibility to establish a process of receipt of funds that will support the correct classification of the funds they hold.
- 4.2 The Charity Commission is clear that donations to NHS trustees without any restriction imposed at the point of donation should be regarded as unrestricted funds held for the statutory remit of the receiving trustee.
- 4.3 The implication is that donations to the Charity **should be presumed to be** unrestricted (and not subject to a 'trust') unless the donor places an unequivocal restriction on it, for example by saying it 'must be used' or 'can only be used' for a specified purpose or by giving to a specific explicitly restricted fundraising appeal.
- 4.4 Trustees may choose to set aside a part of unrestricted funds to be used for particular projects or commitments. By earmarking funds in this way, trustees set up a designated fund that remains part of the unrestricted funds of the charity. At any time, trustees may subsequently decide that the designation is no longer necessary, and return the funds to the charity's general unrestricted funds.
- 4.5 Many donations will be obviously unrestricted in nature. Those that are accompanied by evidence of a donors 'desire, wish, recommendation, hope or expression of confidence' shall be allocated to a relevant unrestricted (designated) fund by the Head of Grants and reported to the Charitable Funds Committee as part of the agreed regular financial reporting schedule.
- 4.6 To ensure timely, suitable and proactive use of legacy donations, receipts over £5k will be placed into centrally managed designated funds, unless the conditions for restriction apply.

5 Unrestricted Funds arising from fundraising appeals

- 5.1 In the case of fundraising appeals, donors may not themselves express the terms of their donation but it is implicit that the donations are subject to the terms of the appeal.
- 5.2 The use of donations arising in response to appeals for funds to achieve explicitly limited purposes may therefore be restricted to those specific limited purposes. All appeals on behalf of the Charity should therefore be broadly worded or accompanied by an explanation to the effect that appeal proceeds may be used for other purposes of the Charity in the event that the appeal purposes cannot be fulfilled. Appeal donations may therefore appropriately be identified as unrestricted funds, typically unrestricted (designated).
- 5.3 NHS Charity Guidance also explains that section 222 of the NHS Act 2006 relates to excess funds donated to an appeal and also to circumstances in which insufficient funds are raised by an Appeal.
- 5.4 In both cases the trustee has the default power to apply the funds in accordance with the Charity's Objects, albeit whilst having due regard to the desirability of applying the funds for a purpose similar to that for which they were given. Whilst such donations may therefore have been restricted at the point of donation they may, in the circumstances described, be subsequently treated as unrestricted.

6 Actively reducing the proportion of restricted funds held

- 6.1 As restricted funds are subject to legally enforceable trusts, any misapplication of such funds ('breach of trust') could form the basis for action against the Corporate Trustee. It is therefore desirable to minimise the proportion of funds held that are classified as restricted.
- 6.2 National guidance supports the principle of trustees aiming to reduce the proportion of the funds they hold that are restricted. By appropriately maximising flexibility in this way, it is possible to optimise the opportunities and efficiency for use of funds for charitable purposes.
- 6.2 The following steps will therefore be taken by the Charity to minimise the number and size of restricted funds it holds:
- an approval process will be applied prior to acceptance or creation of any new restricted funds;
 - restricted funds will be spent first, whenever possible, for example if charitable funding is requested for a particular project any restricted funds applicable to that project should be considered for use in priority to unrestricted funds;
 - regular monitoring of expenditure by the Charitable Funds Committee will ensure that restricted funds are utilised appropriately;
 - careful wording and use of fundraising appeal disclaimers will enable appeal proceeds to be properly used for other purposes of the Charity in the event that the appeal purposes cannot be fulfilled.
- 6.3 The Corporate Trustee should also consider whether restricted funds have been 'spent out', having due regard to the general duty on trustees to expend income within a reasonable period after it is received. This will be achieved through the monitoring of funds by the Charitable Funds Committee.

7 Historical accumulations of unrestricted funds

- 7.1 The general rule for all trustees is that they should expend unrestricted funds within a reasonable period of their receipt. The Charity Commission recognises that, in some cases, trustees hold substantial funds comprising elements of unexpended income and capital growth (much of it unrestricted) accumulated over many years. These invested funds provide a relatively stable income stream for these charities. The Commission has indicated that in these circumstances trustees would **not** be expected to expend the unexpended funds in a short period simply in order to comply with the general rule.

- 7.2 The Commission would however expect trustees to consider applying the historic accumulations before making a new fundraising appeal to support anticipated significant capital expenditure.
- 7.3 The Charitable Funds Committee will receive regular reports concerning expenditure of funds, including 'slow-moving' funds, so that it can ensure that the Charity's assets are utilised appropriately on an ongoing basis.

8 Policy Approval and Review

- 8.1 This Policy has been agreed by the Charitable Funds Committee. Only this Committee, or the Corporate Trustee, has authority to change the Policy, in accordance with the Scheme of Delegation.
- 8.2 This Policy will be reviewed by the Charitable Funds Committee bi-annually and otherwise if circumstances suggest that such a review is necessary.

9 Relevant References and Guidance

This Policy has been developed in line with guidance from the Charity Commission and Association of NHS Charities and with the helpful support of the Charities Auditors, KPMG.

Relevant reference documents include:

- Charities SORP <http://charitiessorp.org/>
- NHS Charities Guidance <https://www.gov.uk/government/publications/nhs-charities-guidance/nhs-charities-guidance>
- [N&N Hospitals Charity Investment Policy \(Trust Docs ID: 15771\)](#)

**This Policy is to be reviewed by the Charitable Funds Committee bi-annually.
Date for next review: May 2023**

The Classification of Charitable Funds

a. **Unrestricted funds:**

Are those funds which are given to a charity (whether solicited or unsolicited) without any restrictions imposed by the donor or grant maker.

Unrestricted funds, therefore, are the funds of a charity that may be spent at the discretion of the trustees, in furtherance of the objects of the charity in which the funds are held, without any distinction between capital and income.

They could include proceeds of a fundraising appeal, provided that the terms of the appeal are sufficiently general and do not specify that donations will only be used for a specific limited purpose. A disclaimer, to the effect that appeal proceeds may be used for other purposes of the Charity in the event that the appeal purposes cannot be fulfilled, will also assist in identifying donations as unrestricted.

b. **Restricted funds:**

- must be used for specific purposes (where this is set out by the donor(s) for example, at the point of donation, or by the terms of a public appeal or by the terms of a grant);
- are subject to a restriction on the expenditure of capital (also known as 'permanent endowment' or 'expendable endowment' depending on the exact terms of the restriction).

Trustees who receive a restricted donation or other restricted payment can properly choose to add that sum to the funds of an existing charity provided that:

- that charity's objects are wider than the restriction;
- the restricted funds are accounted for as such within the accounts of the charity.

Endowment funds, permanent endowment or expendable endowment, are always restricted funds.

c. **Designated funds**

The trustees may exercise their discretion to set aside part of the unrestricted funds of a charity for designated purposes. By way of example a proportion of the funds held within a general research charity may be designated specifically for, say, cancer research.

Designation of funds may also be used where donors have expressed a preference as to their use without imposing a 'trust'. Designated funds remain unrestricted since the trustees can remove the designation at any time.

These designations, whilst being a perfectly acceptable and common practice, do not themselves create legally separate charities. Designated funds continue to be held ultimately for the overall purpose of the charity in which they are contained. Designated funds should be recorded within the summary of unrestricted funds in a charity's accounts.

Funds given on the basis of a donor preference falling short of a restriction are normally to be treated as designated funds, for use in relation to a particular ward, department, speciality or service.

If it becomes impractical to maintain a particular designation the trustee(s) will be free to reconsider the use of the funds without seeking external authority. Where possible they should consider the spirit of the original donations when re-designating or re-classifying funds.